

1 IMPERIUM PATENT WORKS
2 DARIEN K. WALLACE (State Bar No. 139798)
3 T. LESTER WALLACE (State Bar No. 159967)
P.O. Box 587
4 Sunol, California 94586
e-mail: Darien@ImperiumPW.com
Telephone: 925-862-9972
5 Facsimile: 925-835-5804

6 Attorneys for Plaintiff and Counterdefendant
7 ZINUS, INC.

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

10 ZINUS, INC., a California corporation,

11 Plaintiff,
12 v.

13 SIMMONS BEDDING COMPANY, a
14 Delaware corporation, and DREAMWELL,
LTD., a limited liability company of
15 Nevada,

16 Defendants.

17 DREAMWELL, LTD., a limited liability
company of Nevada,

18 Counterclaimant,
19 v.

20 ZINUS, INC., a California corporation,

21 Counterdefendant.

Case No. 07-CV-03012 PVT

**DECLARATION OF DARIEN K.
WALLACE IN SUPPORT OF
ZINUS, INC.'S MOTION FOR
SUMMARY ADJUDICATION OF
NON-INFRINGEMENT**

1 I, Darien K. Wallace, declare:

2 1. I am member of the Bar of this Court and an attorney with the law firm of
 3 Imperium Patent Works, counsel of record for plaintiff and counterdefendant ZINUS, INC.
 4 (“Zinus”) in this case. If called upon as a witness, I could and would competently testify to
 5 the truth of each statement herein.

6 2. Attached hereto as Exhibit W-A is a true and correct copy of U.S. Patent No.
 7 4,711,067, which issued to Giuliano Magni on December 8, 1987, from application serial
 8 number 06/724,034, filed on April 16, 1985. Application serial number 08/724,034 in turn
 9 was a continuation-in-part application of parent application serial number 06/576,709 filed
 10 on February 3, 1984, now abandoned.

11 3. On June 11, 2007, Zinus brought the present legal action seeking, among other
 12 things, a declaratory judgment of non-infringement of U.S. Patent No. Re. 36,142 (“the ‘142
 13 Patent”). The ‘142 Patent issued from reissue application serial number 08/919,655 filed on
 14 August 28, 1997. The ‘142 Patent is a reissue of U.S. Patent No. 5,622,030, which issued on
 15 April 22, 1997, from application serial number 08/416,065 filed on April 4, 1995. In the
 16 prosecution of application serial number 08/416,065, the applicants responded to an Office
 17 action mail on August 14, 1995, with an amendment mailed on January 16, 1996. Attached
 18 hereto as Exhibit W-B is a true and correct copy of the amendment mailed on January 16,
 19 1996, by applicants in the prosecution of application serial number 08/416,065.

20 4. On August 7, 2007, I sent a letter to Ken Wilson, counsel for Dreamwell and
 21 Simmons, explaining that a particular unit of the Swirl Wrap product was made in the United
 22 States using the Swirl Wrap packaging method. The August 7, 2007, letter included eight
 23 photographs depicting the various steps in performing the Swirl Wrap packaging method and
 24 the resulting Swirl Wrap product. Attached hereto as Exhibit W-C is a true and correct copy
 25 of the letter I sent to Ken Wilson on August 7, 2007.

26 5. Exhibit W-D to this declaration is a certified copy of United States reissue
 27 application serial number 08/919,655, which was filed on August 28, 1997, and issued as
 28 U.S. Patent No. Re. 36,142 (the ‘142 Patent) on March 16, 1999. Application serial number

1 08/919,655 is a reissue application of U.S. Patent No. 5,622,030, which issued on April 22,
2 1997, from application serial number 08/694,803, filed on August 9, 1996. Exhibit W-D is
3 not attached, but rather is being filed in paper form only as indicated in a Manual Filing
4 Notification that accompanies this declaration.

5 6. Exhibit W-E to this declaration is a certified copy of United States application
6 serial number 08/694,803, filed on August 9, 1996, which is a continuation application of
7 application serial number 08/416,065, filed on April 4, 1995. Exhibit W-E is not attached,
8 but rather is being filed in paper form only as indicated in a Manual Filing Notification that
9 accompanies this declaration.

10 7. Exhibit W-F to this declaration is a certified copy of United States application
11 serial number 08/416,065, filed on April 4, 1995. Exhibit W-F is not attached, but rather is
12 being filed in paper form only as indicated in a Manual Filing Notification that accompanies
13 this declaration.

14 I declare under penalty of perjury under the laws of the United States of America that
15 the forgoing is true and correct.

16 Executed this 2nd day of October 2007 in Sunol, California.

17
18 _____ /s/
19 Darien K. Wallace
20
21
22
23
24
25
26
27
28